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Richard E. Petrie
University of Nebraska College of Law

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Insurance—Company Liability For Wrongful Death When Insured Murdered By Purchaser With No Insurable Interest

Three insurance companies negligently issued policies on the life of a two-year-old child to an aunt-in-law having no insurable interest in the child's life. A few months later, the aunt murdered the child.[1] Plaintiff, the child's father, recovered a $75,000 judgment against the insurance companies for his child's wrongful death. Held: Judgment affirmed. The central reason for refusing to recognize insurance contracts where the beneficiary has no insurable interest is that such contracts provide a motive for murder. Hence an insurance company must use reasonable care not to issue a life insurance policy to one with no insurable interest and murder of the insured by the "no insurable interest" beneficiary may accordingly be found to be a foreseeable consequence of failing to exercise such care. *Liberty Life Insurance Company v. Weldon*, 267 Ala. 171, 100 So.2d 696 (1957).

The court's reliance on the law of insurance to support its holding on foreseeability seems misplaced. While statements can be found to the effect that the law of insurable interests is to some extent premised on a "temptation to murder" rationale,[2] certainly its central basis is not temptation to murder but the public policy against gambling. This is evident not only from

[1] Dennison v. State, 259 Ala. 424, 66 So.2d 552 (1953) affirmed conviction of the aunt for murder.

[2] Helmetag's Admr'x v. Miller, 76 Ala. 183 (1874).

the many holdings that insurance policies are freely assignable[3] but from judicial approval of other interests involving tendencies quite as fatal to human life—life-tenant-remainderman and testator-legatee relationships,[4] for example. An illustrative case is *Chamberlain v. Butler.*[5] The Nebraska Court, in response to the argument that insurance policies may not be assigned to strangers because this would create a temptation to murder and holding insurance policies to be freely assignable stated as follows:

> . . . the same desire would exist on the part of a creditor who has an insurable interest, or of one who had advanced money on the policy, where his only hope of reimbursing himself for the loan might be the policy. It is exceedingly doubtful if strangers are any more apt to either desire to seek to accomplish the death of others than are those nearly related to them.[6]

Probably the holding should be viewed as merely another illustration of the modern judicial tendency towards expansion of the traditional proximate cause doctrine. *Weldon*[7] seems quite irreconcilable with traditional cases such as *Palsgraf*[8] where the falling of the scale was held to be a non-foreseeable consequence of pushing the firecracker-laden passenger. The expansion of proximate cause, illustrated by *Weldon*[9] is likewise discernable in several other recent cases. In *Genovay v. Fox,*[10] for example, the court held a proprietor of a bowling alley-bar liable when the plaintiff was shot and wounded by a gunman who had been jumped by another patron while robbing the defendant's place of business. The court stated that the proprietor was under a duty to conduct himself so as to avoid inducing or encouraging resistance to the bandit if resistance reasonably appeared to entail an increased risk of serious injury or death to those present.[11]

[3] Murphy v. Reid, 64 Miss. 614, 1 So. 761 (1887), Chamberlain v. Butler, 61 Neb. 730, 86 N.W. 48 (1901), Bray v. Malcolm, 194 Ga. 593, 22 So.2d 126 (1942), Butterworth v. Missouri Valley Trust Co., 62 Mo. 133, 240 S.W.2d 676 (1951).

[4] Murphy v. Reid, 64 Miss. 614, 1 So. 761 (1887), Clark v. Allen, 11 R.I. 439 (1877).

[5] 61 Neb. 730, 86 N.W. 481 (1901).

[6] Id., at 738, 482.

[7] 267 Ala. 171, 100 So.2d 696 (1957).

[8] Palsgraf v. Long Island R. Co., 248 N.Y. 339, 162 N.E. 99 (1928).

[9] Supra, note 7.

[10] 50 N.J.Super. 598, 143 A.2d 229 (1958).

[11] The court found that the defendant intended to communicate to others present in the room, the availability of a concerted attack on the gun-

That *Genovay*[12] is itself an expansion of the traditional proximate cause holdings may be seen by reference to such cases as *Noll v. Marian.*[13] Plaintiff in *Noll,* a depositor in defendant's bank, was denied recovery when shot as a result of refusal by defendant's teller to obey a bandit's command not to move.

This is not to suggest however, that traditional cause notions are everywhere being extended. For example, in *Helms v. Harris,*[14] on similar facts, plaintiff was denied recovery when shot as the result of the defendant's wrestling with the gunman for possession of his revolver.

In conclusion, the instant case[15] seems unrealistic on its reliance on a supposed temptation to murder rationale of the law of insurable interests and is supportable, if at all, only in terms of the most recent foreseeability developments.

Richard E. Petrie '60

man by failing to open the safe on the first try, by placing the money across the room from the bandit, and by suggesting that the gunman take the remaining cash from the safe himself.

12 Supra, note 10.

13 347 Pa. 213, 32 A.2d 18 (1943).

14 281 S.W.2d 770 (Tex.Civ.App. 1955).

15 Supra, note 7.